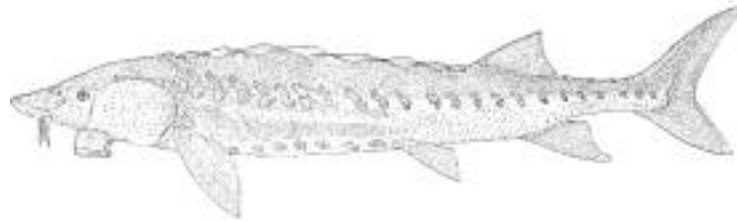


Green Sturgeon ESA Questions & Answers



North American green sturgeon
(*Acipenser medirostris*)

NORTH AMERICAN GREEN STURGEON LISTING UNDER THE ESA: FREQUENTLY ASKED QUESTIONS

Background

On June 12, 2001, NOAA's National Marine Fisheries Service (NMFS), received a petition from the Environmental Protection Information Center, Center for Biological Diversity, and WaterKeepers Northern California requesting that NMFS list the green sturgeon as threatened or endangered under the ESA and that critical habitat be designated for the species concurrently with any listing determination.



Informed by the Biological Review Team's (BRT) 2002 report, NMFS determined that green sturgeon is comprised of two Distinct Population Segments (DPSs) that qualify as species under the ESA: (1) a northern DPS consisting of populations in coastal watersheds northward of and including the Eel River ("Northern DPS"); and (2) a southern DPS consisting of coastal and Central Valley populations south of the Eel River, with the only known population in the Sacramento River ("Southern DPS"). At that time NMFS also determined that neither DPS warranted listing as threatened or endangered (68 FR 4433; January 23, 2003). Uncertainties in the structure and status of both DPSs led NMFS to add them to the Species of Concern List and announce that NMFS would reevaluate the status of green sturgeon in 5 years.

On April 7, 2003, the Environmental Protection Information Center (and other Plaintiffs) challenged NMFS' not warranted finding. The not warranted finding was set aside by the U.S. District Court and the matter was remanded to NMFS. The Court's March 2004 remand was issued because the Court was not satisfied with NMFS' examination of whether purported lost spawning habitat constituted a significant portion of either DPSs' range.

NMFS published a *Federal Register* notice on June 18, 2004, soliciting information from the public to assist in updating the status review and making a new listing determination (69 FR

34135). The public comment period closed on August 17, 2004. The BRT reconvened in November 2004. Co-manager review of the updated status review was initiated on January 27, 2005. The final updated status review for green sturgeon, incorporating co-managers' comments, was completed by the BRT on February 22, 2005, and submitted to NMFS Regional Offices for further consideration.

What was NMFS' determination?

On April 6, 2005, after reviewing new and updated information on the status of green sturgeon and considering whether green sturgeon is in danger of extinction now or in the foreseeable future throughout all or a significant portion of its range, a Proposed Rule to list the Southern DPS of green sturgeon as threatened under the ESA was published in the *Federal Register* (70 FR 17386). NMFS reaffirmed its earlier finding that the Northern DPS does not warrant listing under the ESA at this time, but recommended that it remain on NMFS Species of Concern List (69 FR 19975) due to remaining uncertainties about its status and threats.

Why are there two distinct populations of green sturgeon?

There are two distinct population segments of green sturgeon because recent genetic analyses showed a strong division between the two and because sturgeons generally show fidelity to their spawning sites. This meets the requirement for both discreteness and significance in the DPS policy (USFWS and NOAA 1996).

Why has NMFS revised its previous decision not to list the Southern DPS of green sturgeon under the ESA?

This revision is based on new information that indicates:

- A majority of spawning adults are concentrated into one spawning river
- Threats have remained severe since the last status review
- Fishery-independent data exhibiting a negative trend in juvenile green sturgeon abundance
- Evidence of lost spawning habitat in the upper Sacramento and Feather Rivers.

What is NMFS doing to gather more information regarding both the Northern and Southern DPSs of green sturgeon?

We are currently supporting three studies that will help to address uncertainties for the Northern and Southern green sturgeon DPSs:

- Population abundance estimates.
- Population structure.
- Identification of current and historical habitat areas used by green sturgeon.

In the Southern DPS, we are also coordinating with the CALFED Bay-Delta Program and the California Department of Water Resources Interagency Ecological Program to learn more about the factors that best promote adult fish passage, spawning success, and survival of juvenile green sturgeon, while still satisfying human water resource needs.

What kind of impact could this proposed rule have on water diversions, fishing, farmers, etc., in the Central Valley and other areas?

If the proposed listing is finalized, NMFS will begin addressing the threats to the survival of green sturgeon in the Southern DPS. For example, fishing regulations would likely be modified to prohibit directed take. Since there is a lot of overlap in the distribution of listed salmon and green sturgeon in the Southern DPS, NMFS would review how well salmon conservation measures are protecting the green sturgeon Southern DPS. In many cases, no more protection will be needed. NMFS will ask that identified sources of mortality, such as unscreened diversions that entrain and kill fish, be modified so as to eliminate those sources of mortality. Diversion structures that impede passage to spawning and rearing habitat will be assessed to determine whether passage can be facilitated. Other NMFS actions will depend on better defining the risks that exist for the Southern DPS and its habitat and developing the best solutions for eliminating those risks. NMFS expects to work through the CALFED Bay-Delta Program and other public fora to develop least cost approaches to conservation.

Will there be any chance for the public to review and comment on the Proposed Rule?

Yes. In the April 6, 2005 *Federal Register* notice (70 FR 17386), NMFS solicited the input from the public on the proposed action. NMFS will receive written comments via mail, email, the Federal eRulemaking Portal, and fax until July 5, 2005. If any person so requests by May 23, 2005, at least one public hearing will be scheduled. Notice of the location and time of a public hearing(s) will be published in the *Federal Register* not less than 15 days before the hearing(s) is(are) held.

What happens after the public comment period?

Within one year of publishing the proposed listing regulation, we will either finalize the rule or publish a notice extending the one-year period in the *Federal Register* if NMFS finds that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination. The extension may be for a maximum of six months, for purposes of soliciting additional data.

Are there any special considerations because the Southern green sturgeon DPS is being listed as threatened instead of endangered?

When a species is listed as *endangered* under the ESA, it automatically receives certain protections, such as the prohibition for anyone under the jurisdiction of the United States to “take” the species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. When a species is listed as *threatened*, those same protections are not automatically transferred to the species. NMFS must propose and publish a separate rule to issue protective regulations and exemptions necessary to provide for the conservation of threatened species. This is called a 4(d) rule, as it is required by section 4(d) of the ESA.

Will NMFS propose a 4 (d) rule?

Since NMFS is proposing a threatened status for the Southern DPS of green sturgeon, we will propose a 4(d) rule to issue protective regulations and exemptions subsequent to publishing the final listing rule. During the development of the 4(d) rule, NMFS will contact and coordinate with State, Tribal, and federal resource managers to identify activities that may adversely affect the Southern DPS as well as potential take exemptions.

Will NMFS propose Critical Habitat?

A final rule designating critical habitat of an endangered or threatened species shall be, to the maximum extent prudent and determinable, published concurrently with the final rule listing the Southern DPS. If at that time critical habitat is undeterminable, the period may be extended by not more than one additional year.

Will NMFS develop a Recovery Plan for the Southern DPS of green sturgeon?

NMFS is required to develop a recovery plan after a species is added to the Endangered Species List, unless we find that such a plan will not promote the conservation of the species. Recovery is the process by which listed species and their ecosystems are restored and their future is safe guarded to the point that protections under the ESA are no longer needed. Although recovery *actions* can, and should, start immediately upon listing a species as endangered or threatened under the ESA, prompt development and implementation of a recovery *plan* will ensure that recovery efforts target limited resources effectively and efficiently into the future. The recovery plan serves as a road map for species recovery – it lays out where we need to go and how best to get there. NMFS expects to convene a recovery team to develop the recovery plan for the Southern DPS of green sturgeon, contingent upon receiving appropriations.

Who should be contacted for more information?

The Southwest Region Protected Resources Division is the lead in developing the listing rule and all subsequent rules. For more information, please contact Melissa Neuman.

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